NASUCA
NATIONAL ASSOCIATION
OF STATE UTILITY
CONSUMER ADVOCATES

Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Deborah Tate
Federal Communications Commission (via e-mail)

Ex parte communication,
FCC Dockets 96-45, 01-92, 03-133

February 27, 2006

Dear Chairman Martin and Commissioners:

For a number of years, the opinion has been expressed that the Federal Communications Commission's current universal service contribution mechanism, which bases contributions on interstate revenues, is "broken" and needs to be replaced by a connections-based or numbers-based mechanism.[1] In the past, it was asserted that the revenues-based mechanism was in a "death spiral."[2] This view is supposedly grounded in concerns about the level of interstate revenues. **The facts show these concerns to be exaggerated.**

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[1] See, e.g., February 1, 2006 ex parte presentation by CTIA - The Wireless Association®; remarks of Senator Ted Stephens to the National Association of Regulatory Commissioners (February 2006), http://commerce.senate.gov/newsroom/printable.cfm?id=251507.

[2] See CC Docket No. 96-45, Coalition for Sustainable Universal Service *ex parte* (November 14, 2001).

The National Association of State Utility Consumer Advocates ("NASUCA"[3]) seeks to bring the Commission's attention to the fact that interstate revenues as reported to the Commission have remained stable, as shown on the attached charts. The contribution base in the first quarter of 2006 (1Q06) is actually slightly higher than the contribution base from the first quarter of 1999 (1Q99), a period of seven years. The current level of $18.45 billion is only 12% less than the high of $20.96 billion in 4Q00 but is 12% higher than the low of $16.43 billing in 1Q05. Indeed, in the face of increasing USF need (as discussed below), the contribution factor has remained relatively stable over the last five quarters.

This means there is no pressing need -- indeed, possibly no long-term need -- for the Commission to adopt a contribution mechanism other than the current mechanism based on interstate and international revenues.

Some stakeholders argue that the revenue-based mechanism needs to be changed because, they allege, it is becoming more difficult to identify interstate traffic, given the increasing bundling of services. Again, the facts show otherwise. For example, carriers currently disaggregate their interstate and intrastate revenues for a variety of purposes, including the assessment of taxes and regulatory charges. And the "safe harbors" that the Commission has adopted for some services probably understate the current level of interstate traffic.

Some also argue that the move to Internet-based services threatens the traditional wireline long distance revenue base, and requires movement to a connection-based mechanism. Yet the Commission has already asserted exclusive jurisdiction over these services; it is clearly within the Commission's ability and, moreover, entirely appropriate to require such services to make USF contributions.[4] Other means of increasing the revenue base were described in appendices to NASUCA's September 30, 2005 comments filed in the CC Docket No. 96-45.

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[3] NASUCA is a voluntary, national association of 45 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[4] *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order, FCC 05-150 (rel. September 23, 2005), ¶¶ 112-113. In that order, the Commission continued assessing digital subscriber line service until June 20, 2006. NASUCA urges the Commission to make that policy permanent, and also to assess other similar services. The Commission should not hesitate to assess these services despite the fact that they cannot currently receive funds from the federal USF. Wireline interstate long distance services are the traditional source for universal service funding, despite the fact that none of the USF benefits such services; nonetheless, they benefit from the ubiquitous network.

Of course, the key task is to keep the draw on the fund within reasonable levels. The Commission has many proposals before it to limit the growth in the fund; NASUCA's proposals in this regard were also presented in the September 30 comments.

Despite these facts, some continue to argue that the revenue-based mechanism needs to be replaced with a connections-based or a numbers-based mechanism. NASUCA continues to oppose these proposals because a connection-based mechanism inevitably shifts USF responsibility from those who use interstate services (as with the current revenue mechanism) to those who merely have access to the local network, regardless of their interstate usage, or even of their intrastate usage. This inevitably shifts the burden of supporting the entire USF and all the programs it contains onto lower use and lower income consumers. This shifting of burdens is not in the public interest.

Neither is it in the public interest that a connections-based mechanism allows carriers who provide interstate services but have no end-user connections to evade responsibility for USF assessments.[5] These carriers -- typically interexchange carriers -- have traditionally been the source of USF contributions.

Many of those who predict doom for the revenue-based contribution mechanism do so not only because of the supposed threats to the contribution base -- which, as noted, have not materialized -- but because of the dangers of substantial increases to the USF itself. That is clearly part of the message of the Intercarrier Compensation Forum ("ICF"). ICF's original "solution" to the intercarrier compensation issue is to move to a system where carriers do not compensate each other for use of their networks (i.e., pure "bill-and-keep"). ICF proposes to make up all lost revenues resulting from the change through a combination of direct end-user rate increases and a huge increase in the USF. Skeptics might, therefore, view ICF's reliance on a connections-based mechanism as largely window dressing, reasonably thinking that massive changes to the mechanism will create enough confusion to hide the increase in the USF. As NASUCA has previously demonstrated, however, the revenue-based mechanism is actually more robust and equitable than a connection-based mechanism, especially where the needs of the fund grow substantially.[6]

Those who support the transition from the current revenue-based mechanism to another mechanism do not discuss the costs of that transition,[7] which are certain to be substantial

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[5] CTIA proposes a revenue mechanism for carriers that have no connections or numbers. CTIA February 1, 2005 ex parte at 7. Carriers will likely obtain *de minimis* numbers of connections in order to have their revenues exempt from assessment. And carriers are equally likely to take advantage of arbitrary definitions and assessments of connections. See id. at 5.

[6] CC Docket No. 96-45, et al., NASUCA Reply Comments on Staff Study (May 16, 2003) at 7-11. No party has, to NASUCA's knowledge, attempted to refute these findings.

[7] See CTIA February 2, 2006 ex parte.

and are certain to result in demands by carriers seeking a mandatory pass-through of those costs. Those costs will be magnified, of course, if the transition period is brief.[8]

In considering all these facts, NASUCA urges the Commission not to move away from the current revenue-based USF contribution mechanism. There are more gradual, less radical changes that will adequately preserve and advance the USF.

Respectfully submitted,

/s/ David C. Bergmann____________

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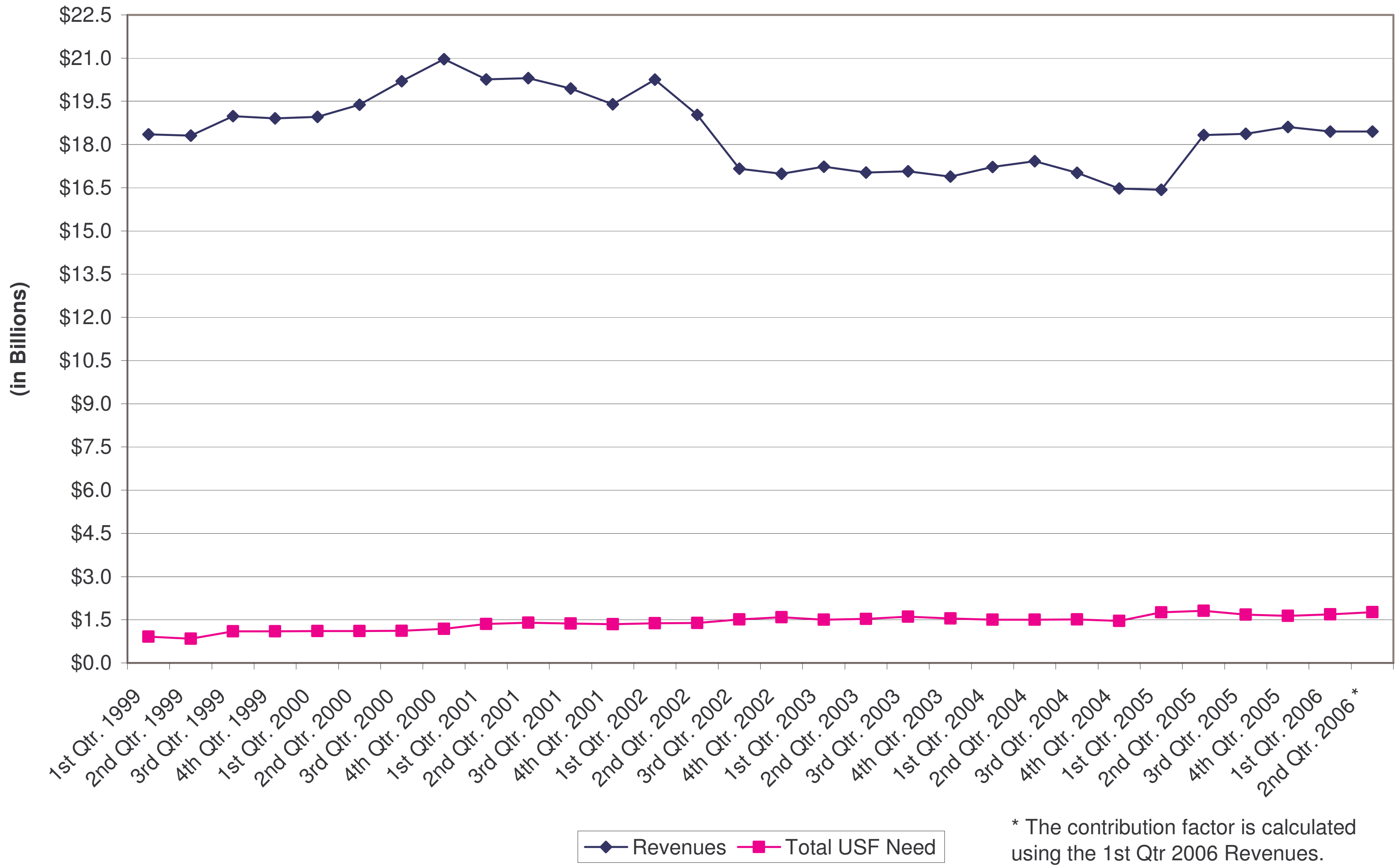
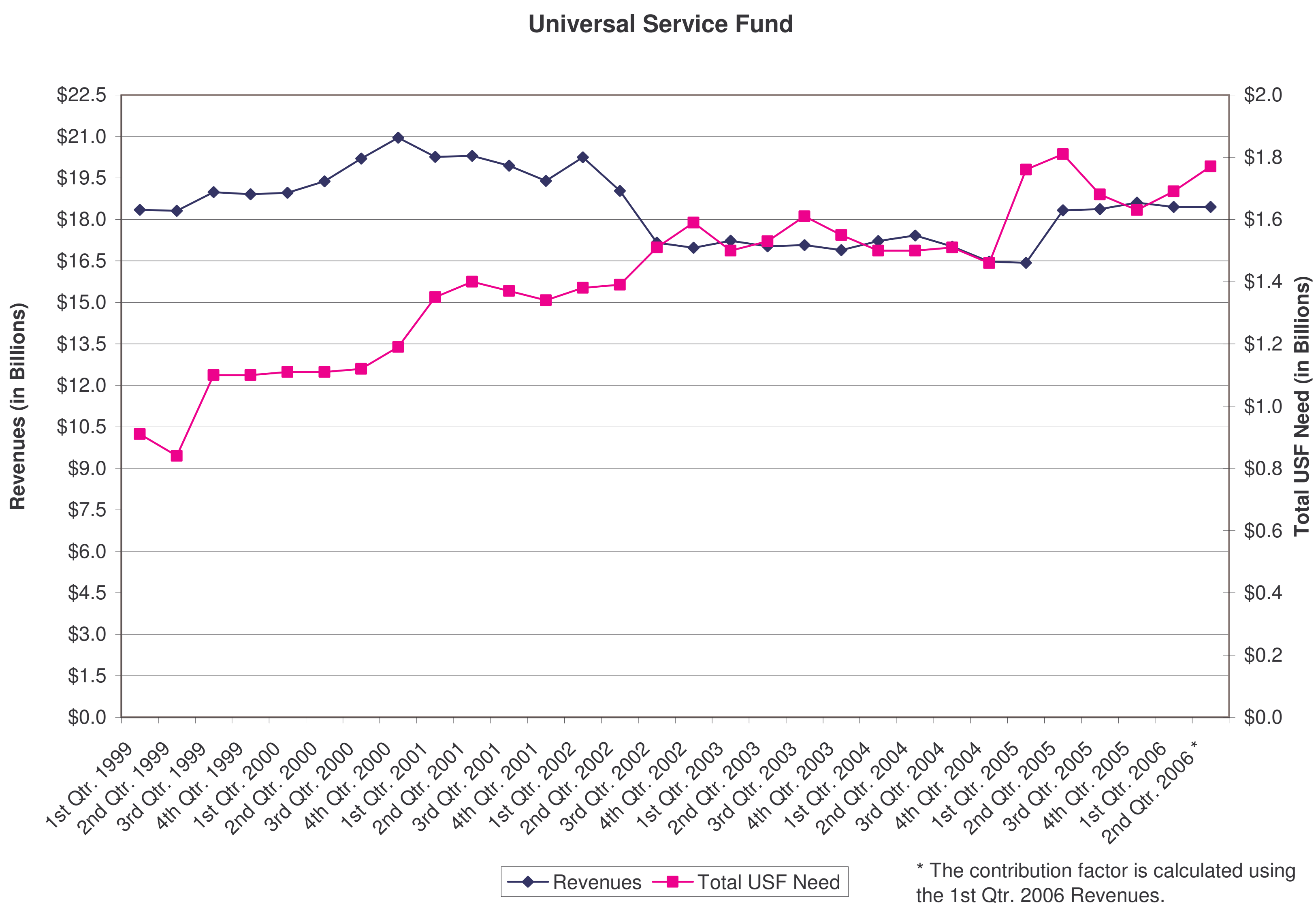
CC: Federal-State Joint Board on Universal Service (and Joint Board Staff).

[8] Id. at 7.

Chart 1

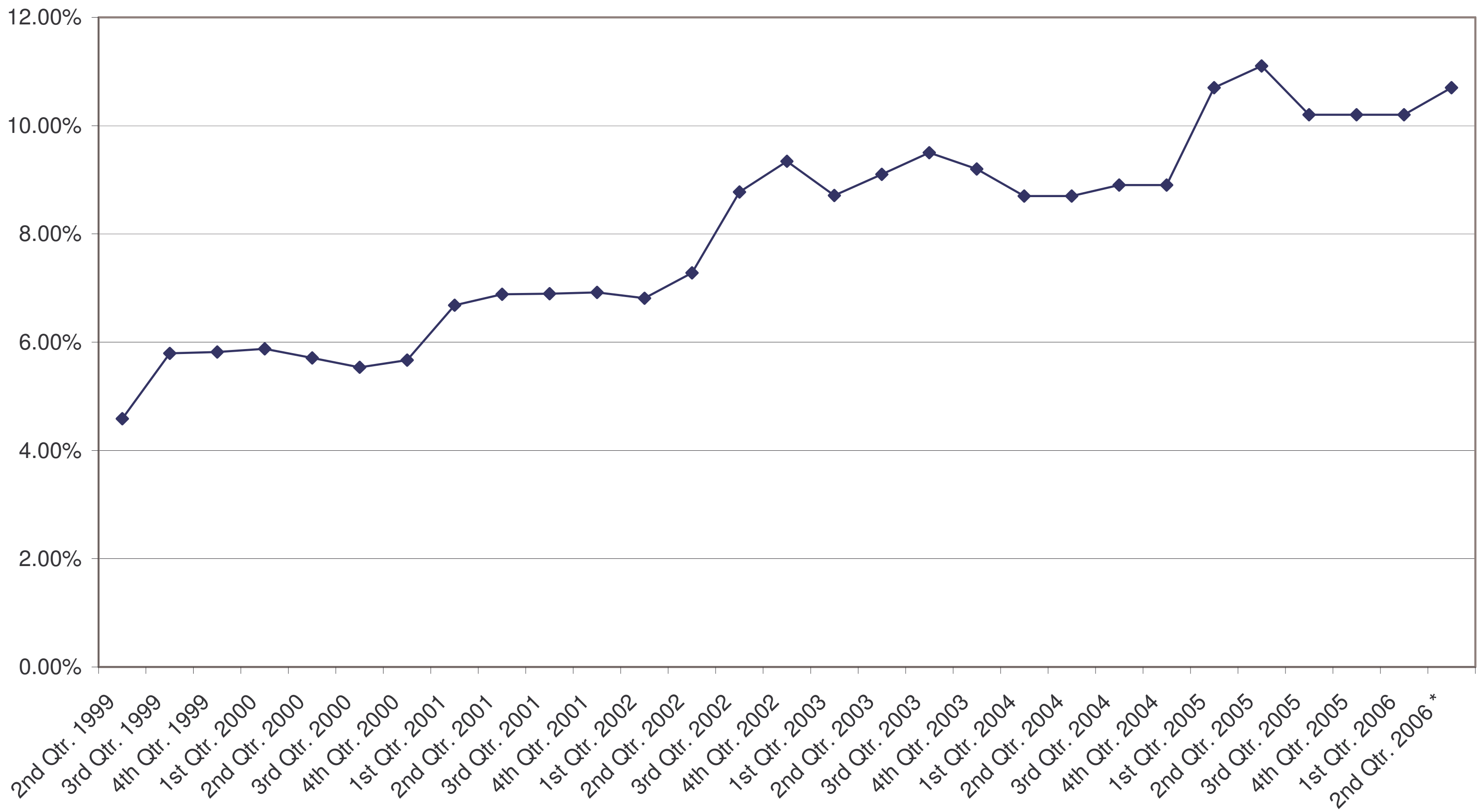



* The contribution factor is calculated using the 1st Qtr 2006 Revenues.




* The contribution factor is calculated using the 1st Qtr. 2006 Revenues.

**Universal Service Fund**
**Contribution Factor**




* The contribution factor is calculated using the 1st Qtr. 2006 Revenues.

**USF Contribution Fund**

| | Revenues | Total USF Need | Contribution Factor |
|---|---|---|---|
| 1st Qtr. 1999 | 18.35 | 0.91 | 0.050 |
| 2nd Qtr. 1999 | 18.31 | 0.84 | 0.046 |
| 3rd Qtr. 1999 | 18.99 | 1.10 | 0.058 |
| 4th Qtr. 1999 | 18.91 | 1.10 | 0.058 |
| 1st Qtr. 2000 | 18.96 | 1.11 | 0.059 |
| 2nd Qtr. 2000 | 19.38 | 1.11 | 0.057 |
| 3rd Qtr. 2000 | 20.20 | 1.12 | 0.055 |
| 4th Qtr. 2000 | 20.96 | 1.19 | 0.057 |
| 1st Qtr. 2001 | 20.26 | 1.35 | 0.067 |
| 2nd Qtr. 2001 | 20.30 | 1.40 | 0.069 |
| 3rd Qtr. 2001 | 19.94 | 1.37 | 0.069 |
| 4th Qtr. 2001 | 19.40 | 1.34 | 0.069 |
| 1st Qtr. 2002 | 20.25 | 1.38 | 0.068 |
| 2nd Qtr. 2002 | 19.03 | 1.39 | 0.073 |
| 3rd Qtr. 2002 | 17.16 | 1.51 | 0.088 |
| 4th Qtr. 2002 | 16.98 | 1.59 | 0.093 |
| 1st Qtr. 2003 | 17.23 | 1.50 | 0.087 |
| 2nd Qtr. 2003 | 17.03 | 1.53 | 0.091 |
| 3rd Qtr. 2003 | 17.07 | 1.61 | 0.095 |
| 4th Qtr. 2003 | 16.89 | 1.55 | 0.092 |
| 1st Qtr. 2004 | 17.22 | 1.50 | 0.087 |
| 2nd Qtr. 2004 | 17.42 | 1.50 | 0.087 |
| 3rd Qtr. 2004 | 17.02 | 1.51 | 0.089 |
| 4th Qtr. 2004 | 16.47 | 1.46 | 0.089 |
| 1st Qtr. 2005 | 16.43 | 1.76 | 0.107 |
| 2nd Qtr. 2005 | 18.33 | 1.81 | 0.111 |
| 3rd Qtr. 2005 | 18.37 | 1.68 | 0.102 |
| 4th Qtr. 2005 | 18.61 | 1.63 | 0.102 |
| 1st Qtr. 2006 | 18.45 | 1.69 | 0.102 |
| 2nd Qtr. 2006 * | 18.45 | 1.77 | 0.107 |

Source: Contribution Factor Public Notices.

Note - For the fourth quarter of 2005, because of the impact of Hurricane Katrina, the FCC adjusted the contribution base to $17.87 billion to maintain the contribution factor at 10.2%.

* The contribution factor is calculated using the 1st Qtr. 2006 Revenues.